



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC039]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of the Sunrise Wind Offshore Wind Farm, offshore New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for regulations and Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a petition from Sunrise Wind, LLC (Sunrise Wind), a 50/50 joint venture between Orsted North America Inc. (Orsted) and Eversource Investment LLC (Eversource), requesting authorization to take small numbers of marine mammals incidental to construction and operation activities associated with the Sunrise Wind Offshore Wind Farm in a designated lease area on the Outer Continental Shelf (OSC-A 0487) offshore New York over the course of 5 years beginning in 2023.

Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Sunrise Wind's request for the development and implementation of regulations governing the incidental taking of marine mammals and issuance of a Letter of Authorization (LOA). NMFS invites the public to provide information, suggestions, and comments on Sunrise Wind's application and request.

DATES: Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Daly@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of Sunrise Wind's application may be obtained online at: *<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>*. In case of problems accessing these documents, please email the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if

the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. For requests under section 101(A)(5)(A) of the MMPA, NMFS is also required to begin the public review process by publishing a notice of receipt of a request for the implementation of regulations governing the incidental taking (50 CFR 216.104(b)(1)(ii)).

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On November 10, 2021, NMFS received an application from Sunrise Wind requesting authorization for the taking of marine mammals incidental to construction and operation activities related to the development of the Sunrise Wind Offshore Wind Farm

offshore of Rhode Island in Commercial Lease (OCS-A-0487). In response to our comments, and following extensive information exchange with NMFS, Sunrise Wind submitted a final, revised application on May 9, 2022, that we determined was adequate and complete on May 10, 2022. Sunrise Wind requested the regulations and subsequent LOA be valid for five years beginning in 2023.

Sunrise Wind considered the following activities associated with wind farm construction and operation in its application: impact installation of up to 94 wind turbine generators (WTG) monopole foundations at 102 potential locations; impact installation of one offshore converter stations (OCS-DC) jacket foundation; installation and removal of temporary cofferdams or casing pipes with support sheet piles at the cable landfall location using a pneumatic pipe rammer, impact hammer, and vibratory hammer; detonation of unexploded ordnances (UXOs); high-resolution geophysical (HRG) site characterization surveys; fisheries monitoring surveys; and export cable and inter-array cable trenching, laying, and burial. Vessels will be used to transport crew, supplies, and materials within the Project area to support construction and operation. Sunrise Wind has determined that a subset of these activities (*i.e.*, WTG and OCS-DC foundation installation, installing and removing piles and casing pipes at the cable landfall location, HRG surveys, and UXO detonation) may result in the taking, by Level A harassment and Level B harassment, of marine mammals. Therefore, Sunrise Wind requests authorization to incidentally take marine mammals.

Specified Activities

In Executive Order 14008, President Biden stated that it is the policy of the United States to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers

environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 CFR 585.211, Sunrise Wind was awarded Commercial Lease OCS-A 0487 offshore of New York and the exclusive right to submit a construction and operations plan (COP) for activities within the lease area. Sunrise Wind has submitted a COP to BOEM proposing the construction, operation, maintenance, and conceptual decommissioning of the Sunrise Wind project, a 924 – 1,034 megawatt (MW) commercial-scale offshore wind energy facility located within Lease Area OCS-A 0487 and consisting of up to 94 wind turbines, one offshore sub-stations, and 1 transmission cable to shore.

Sunrise Wind anticipates the following activities may potentially result in harassment of marine mammals:

- installing up to 94 WTG monopile foundations with a maximum diameter tapering from 7 meters (m) above the waterline to 12 m (39 ft) below the waterline (7/12 m monopile) using a 4,000 kilojoule impact hammer pile driving from May through December in 2024;
- installing one OCS-DC jacket foundation (8 4-m pin piles) by impact pile driving from May through December in 2024;
- installing and removing 2 casing pipes by pneumatic ramming and/or impact driving and supporting sheet piles by vibratory pile driving at the cable landfall location on Fire Island, New York (up to four days to install and remove each casing pipe for 8 days total plus up to 24 days to install and remove supporting sheet piles);
- using HRG equipment to survey approximately 30,861 kilometers (km) over approximately 621 days across all 5 years (2023 – 2028);

- the potential high-order detonation of up to 3 UXOs over the course of 3 days in 2024 (1 UXO detonation per day, as necessary).

Sunrise Wind has noted that these are the most accurate estimates for the durations of each planned activity, but that the schedule may shift over the course of the Project due to weather, mechanical, or other related delays.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning Sunrise Wind's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Sunrise Wind, if appropriate.

Dated: May 27, 2022.

Catherine Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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